

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
VARIANCE PERMIT GRANTED BY
MASON COUNTY AND DENIED BY
WASHINGTON STATE DEPARTMENT
OF ECOLOGY,

ALEX and LILLIAN WILSON,
and MASON COUNTY,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondents.

SHB No. 85-8

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

THIS MATTER, the appeal of a denial of a shoreline variance for a residence adjacent to Hood Canal, came on for hearing before the Board on February 6, 1986 at Lacey. Seated for and as the Board were; Lawrence Faulk, Wick Dufford, Nancy Burnett, Rod Kerslake and Gayle Rothrock (presiding). Betty Koharski, court reporter, officially reported the proceedings.

1 Appellants Wilson appeared and were represented by Gordon Golub,
2 attorney-at-law. Appellant, Mason County did not appear. Respondents
3 appeared and were represented by Jay J. Manning, Assistant Attorney
4 General.

5 Witnesses were sworn and testified. Exhibits were admitted and
6 examined. Argument was heard. From the testimony, evidence, and
7 contentions of the parties the Board makes these

8 FINDING OF FACT

9 I

10 Appellant Alex and Lillian Wilson live in Gig Harbor and since
11 1984, have owned some grown-over undeveloped property on the south
12 shore of Hood Canal off Highway 106 near Twanoh State Park in an Urban
13 Residential environment. They formerly lived in the Hood Canal area
14 and now desire to build a single family residence on the grown-over
15 property and retire to Hood Canal. Hood Canal is a shoreline of
16 statewide significance.

7 II

8 Mason County is the local authority governing land use and
9 shoreline developments in the subject area. The county analyzes and
10 issues or denies various environmental permits, among which are
11 variances from requirements of the Mason County Shoreline Master
12 Program (MCSMP).

3 III

14 The Washington State Department of Ecology (WDOE) is an agency
15 empowered to review permits, issued under authority of the Shoreline

16 FINAL FINDINGS OF FACT,
17 CONCLUSIONS OF LAW AND ORDER
SHB No. 85-8

1 Management Act (SMA) and sundry local shoreline master programs.
2 Shoreline variances and conditional use permits granted by local
3 governments must be approved by the WDOE before they become effective.

4 IV

5 The Wilson property was bulkheaded sometime prior to 1971. The
6 result is 4,000 square feet of upland, pentagonal-shaped and 80 feet
7 wide at its maximum. The bulkhead, which defines the line of ordinary
8 high water, proceeds westerly from the north east corner of the tract
9 and then cuts back southwest near the mid-point of the width of
10 property, partially channelizing a stream outlet immediately to the
11 west of the property. On the opposite side of Highway 106, 150 feet
12 or more from their shorefront property, is a second parcel the Wilsons
13 own which they plan to use for a septic system drainfield and perhaps
14 for parking for guests. No evidence was presented to indicate its
15 lack of suitability for other uses.

16 V

17 The Wilsons' property is the last buildable lot in the
18 neighborhood to be developed. Except for the parcel immediately
19 adjacent to the west where the shoreline is recessed for the mouth of
20 a stream, residential development crowds the shorelines in both
21 directions and, in general, reflects a tendency to build as close to
22 the water as possible. There is no uniform setback line in the area.
23 Most houses in the vicinity are relatively substantial.

24 VI

25 The Wilsons engaged an architect, who designed a 2500-square foot

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
SHB No. 85-8

1 home with about 1500 square feet of ground-floor living space, a 400
2 square foot double garage, and an upstairs of 600 square feet. The
3 height would be 24 feet. Part of the west side of the house would be
4 set back only 5 feet from the bulkhead under this plan. The garage
5 (22 feet by 20 feet) would sit on the southeast end of the home.

6 The Wilsons' were under the impression there would be no problem
7 in obtaining all appropriate permits for building a single-family
8 residence according to this design when they finally agreed to
9 purchase the property. They worked through a local realtor.

10 VII

11 In October of 1984, Wilsons applied for a shoreline variance for
12 their planned home since it did not meet the MCSMP 15-foot setback
13 from high water mark (the bulkhead). The variance application was
14 analyzed by county staff, announced for public review, and, on
15 November 27, 1984, recommended for approval by the Mason County
16 Shoreline Advisory Board after testimony by Wilson's agent and receipt
17 of a staff report.

18 The Board of County Commissioners received the recommendation on
19 December 3, 1984. The transmittal noted that the regulation setback
20 (MCSMP Section 7.16.080) could be met, except for that portion of the
21 west side of the house which would be only five feet from the
22 bulkhead. The agent had asserted the residence would not be waterward
23 of the common setback line and would result in no view obstruction.
24 The staff report to the Shoreline Advisory Board further noted the
25 proposed dwelling plan would comply with current health regulations

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
SHB No. 85-8

1 and would not threaten the ecology of Hood Canal. The staff report
2 did note and list the exact requirements for granting a variance and
3 called attention to the criterion that compliance with the provision
4 of the MCSMP from which the variance is sought must preclude any
5 reasonable use of the property.

6 VIII

7 After review of the records and testimony the Board of
8 Commissioners on December 10, 1984 approved a shoreline variance for
9 the Wilson's plot plan. The variance permit was then sent to the WDOE
10 for approval or denial.

11 IX

12 On the eighth of February, 1985 WDOE issued a denial of the
13 variance for its failure to meet all the variance criteria of the
14 MCSMP, particularly noting that reasonable use of the property is
15 possible without building the precise dwelling designed for the
16 Wilsons.

17 X

18 Feeling aggrieved by the decision of WDOE, appellants Wilson filed
19 a request for review with this Board on March 12, 1985. The matter
20 was subsequently certified for review by the Attorney General and WDOE
21 and a pre-hearing conference was conducted April 22, 1985. Several
22 requested continuances then intervened, causing the hearing on the
23 matter to be deferred until 9 1/2 months later.

24 XI

25 Any Conclusion of Law which is deemed a Finding of Fact is hereby
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
SHB No. 85-8

1 adopted as such.

2 From these Findings of Fact the Board comes to these

3 CONCLUSIONS OF LAW

4 I

5 The Board has jurisdiction over these persons and these matters.
6 Chapter 90.58 RCW.¹

7 II

8 The MCSMP at Section 7.08.240(c) defines an Urban Residential
9 shoreline environment as one of high-intensity residential land use.

10 The MCSMP definition also notes these shorelines should have few
11 geographic limitations and contemplates the inclusion of public visual
12 and physical access to water when appropriate development is allowed.

13 III

14 Mason County, in its master program, elected to institute a
15 shoreline setback for structures in the Urban Residential environment
16 of 15 feet from the line of ordinary high water. MCSMP Sections
17 7.16.080(2) and 7.20.010(A). It further provides that structures
18 shall not extend beyond the common line of neighboring structures and
19 new construction shall not substantially reduce the view of
20 neighboring structures.

21
22 1/ The Board has no evidence before it to support the contention that
23 WDOE was unduly dilatory in reviewing the Wilson variance (permit)
24 filing by the county. An issue developed at pre-hearing regarding the
25 timeliness of the WDOE review of the original variance filing by Mason
26 County was not pursued at hearing.

1 Although the Wilson's proposed home design presents no problem of
2 common line encroachment or neighbors' view obstruction, the
3 unmistakable requirement for a 15-foot setback cannot be met with the
4 "footprint" made by the permit drawing^{2/} before us for review.

5 IV

6 In considering whether a variance from setback and dimensional
7 standards might be employed here to grant relief from the strict
8 letter of the MCSMP, the variance criteria of Section 7.28.020 come
9 into play. These are applicable because they are more restrictive
10 than the variance criteria set forth in the WDOE's rules. See WAC
11 173-14-155; Simchuck v. DOE, SHB No. 84-64 (1985).

12 The MCSMP allows variances to be granted under the following
13 conditions:

14 Variances deal with specific requirements of this
15 ordinance and the objective is to grant relief when
16 there are practical difficulties or unnecessary
17 hardships in the way of carrying out the strict
18 letter of this ordinance. The property owner must
19 show that if he complies with the provision, he
20 cannot make any reasonable use of his property.
The fact that he might make a greater profit by
using his property in a manner contrary to the
intent of the ordinance is not a sufficient reason
for a variance. A variance will be granted only
after the applicant can demonstrate the following:
(Emphasis added).

21 A. The hardship which serves as a basis for the
22 granting of as variance is specifically related to
the property of the applicant.

23 B. The hardship results from the application of
24 the requirements of the Shoreline Management Act

25
26 ^{2/} Architectural drawing or plot plan.

1 and this ordinance and not from, for example, deed
2 restrictions or the applicant's own actions.

3 C. The variance granted will be in harmony with
4 the general purpose and intent of this ordinance.

5 D. Public welfare and interest will be preserved;
6 if more harm will be done to the area by granting
7 the variance than would be done to the applicant by
8 denying it, the variance will be denied. MCSMP
9 7.28.020.

10 Here the hardship announced is partly of the applicants' own
11 making, as they desire to have a good-sized home with certain
12 amenities. Moreover, a reasonable residential use of this property
13 can otherwise be made with a dwelling of different design--perhaps
14 smaller or without an attached garage, or with a smaller garage or a
15 larger second story. Denial of the precise configuration the owners
16 desire is not the equivalent of the prevention of "any reasonable use."

17 V

18 Accordingly, we hold that the proposed house and garage do not
19 meet the variance criteria set forth in the MCSMP and that the WDOE
20 made no error in denying the variance. See Buechel v. DOE, SHB No.
21 85-1 (1985); Renkel v. Mason County, SHB No. 85-6 (1985).

22 VI

23 Counsel for the Wilsons eloquently argues that the underlying
24 purpose of the setback is not met under the facts here, where
25 placement of the house within the setback would have no negative
26 effect on aesthetics or neighbors' views, where the design is of a
27 high quality in keeping with the character of the neighborhood, where
there is no apparent local objection and where the encroachment is no

28 FINAL FINDINGS OF FACT,
29 CONCLUSIONS OF LAW AND ORDER
30 SHB No. 85-8

1 worse than many others which exist in the area. Since this is the
2 last undeveloped parcel in the immediate vicinity, he asserts there
3 will be no precedential effect from granting a variance.

4 Taking notice of the developmental pressure along the shorelines
5 of Hood Canal within Mason County, we are not persuaded by the
6 assertion of lack of precedential effect. Moreover, we know that the
7 drafters of the MCSMP had to be aware of the high degree of existing
8 non-conformity with the setback when they adopted it in the early
9 1970's. Essentially, the requirement was an exercise in drawing the
10 line for the future.

11 The applicable MCSMP variance criteria are what we are given to
12 work with in evaluating requests for exceptions from the MCSMP general
13 bulk, dimensional and setback limitations. Appellants, in effect, ask
14 for a variance from the variance criteria. This we cannot approve, if
15 we are to remain true to our duty to review developments for
16 consistency with the relevant regulations and master program. RCW
17 90.58.140.

18 VII

19 Any Finding of Fact which deemed a Conclusion of Law is hereby
20 adopted as such.

21 From these Conclusions of Law the Board enters this
22
23
24
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
SHB, No. 85-8

ORDER


The Washington State Department of Ecology's denial of the Wilson Shoreline variance (permit) is affirmed

DONE this 7th day of April, 1986.

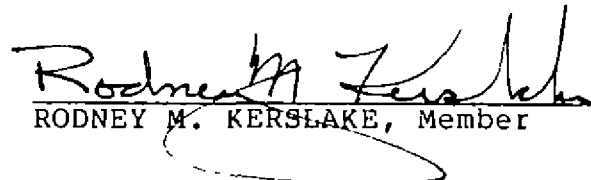
SHORELINES HEARINGS BOARD


GAYLE ROTHROCK, Vice-Chairman


LAWRENCE J. FAULK, Chairman


WICK DUFFORD, Lawyer Member


NANCY BURNETT, Member


RODNEY M. KERSLAKE, Member